FILED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

02 SEP -3 PM 2:15

In re:	)	
	)	
MEADOWCRAFT, INC.,	)	Case No. 02 09 10
	)	Chapter 11 Proceeding
Debtor.	)	

DEBTOR'S MOTION FOR AUTHORITY TO PAY PRE-PETITION WAGES, SALARIES AND EMPLOYEE BENEFITS AND TO HONOR CHECKS FOR PAYMENT OF PRE-PETITION EMPLOYEE OBLIGATIONS PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 507(a) AND 1114(e)

Meadowcraft, Inc., debtor and debtor-in-possession (the "Debtor"), moves the Court to authorize payment of pre-petition wages, salaries and employee benefits and to direct banks to honor checks for payment of pre-petition employee obligations, as follows:

BACKGROUND

1. On September 3, 2002 (the "Filing Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code").

2. The Debtor is operating its business and managing its affairs as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee, committee or examiner has been appointed in the Debtor's bankruptcy case.

3. The Debtor is a privately-owned corporation organized and existing under the laws of the state of Delaware with its principal place of business in Birmingham, Alabama.

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4. The Debtor is the leading domestic producer of casual outdoor furniture and is the largest manufacturer of outdoor wrought iron furniture in the world. The Debtor designs, manufactures and distributes a variety of wrought iron consumer products, including outdoor and indoor furniture and accessories, and outdoor cushions and umbrellas, which it markets to mass merchandisers and specialty stores primarily in the United States. The Debtor believes that it has established a reputation as an innovator in the design, manufacturing, distribution and marketing of moderately priced, quality wrought iron furniture.

5. The Debtor offers consumers a wide variety of products across different price points in three markets: the outdoor mass market under the Plantation Patterns brand name; the outdoor specialty market under the Meadowcraft, Arlington House, and Salterini brand names; and the indoor mass markets under the Home Collection from Plantation Patterns brand name.

6. The Debtor during peak production periods employs over 1,700 people, and presently employs over 1,200 people in the state of Alabama. The Debtor owns manufacturing facilities in Birmingham, Jefferson County, Alabama, Wadley, Randolph County, Alabama, and Selma, Dallas County, Alabama. The Debtor recently closed its manufacturing and distribution operations in Yuma, Arizona and Mexico.

7. The Debtor generated net sales of approximately $123 million in fiscal year ending July 31, 2001. The Debtor suffered net operating losses of approximately $46 million in fiscal year 2001. The Debtor estimates net sales of $108 million in fiscal year ending July 31, 2002. Sales for fiscal year 2002 are lower than desired primarily as a result of the loss of approximately $15 million in sales from two of the Debtor's large mass merchandise accounts, Service Merchandise and K-Mart, due to these companies' bankruptcy proceedings. Additionally, the Debtor's specialty

market sales were $5 million less than anticipated due to a down market for the industry. The Debtor projects operating losses of $1 million and net losses of $8 million to $10 million in fiscal year 2002.

8. The Debtor's poor financial performance in fiscal year 2001 is attributable to numerous factors. These factors include: (1) difficulties with the installation of and conversion to new computer hardware and software systems; (2) substantial excess manufacturing capacity; (3) the manufacturing of product with low profit margins in an attempt to reduce costs associated with excess capacity; (4) reduced sales due to competition from China; and (5) reduced sales due to some mass merchandise customers being over stocked with product from China.

9. The Debtor's financial performance in fiscal year 2002 has substantially improved as a result of strong management and implementation of more stringent financial controls. In March, 2001, the Debtor retained Marcus A. Watson of Finley Colmer & Company to assist the Debtor in its financial turnaround. Mr. Watson presently serves as President of the Debtor. Under Mr. Watson's guidance, the following financial improvements have been made: (1) general and administrative expenses have been reduced by over $3 million; (2) manufacturing margins have improved from five percent (5%) to seventeen percent (17%); (3) product inventory has been reduced by $14 million; (4) obsolete inventory in the amount of $6 million has been sold; and (5) much of the excess manufacturing capacity has been eliminated through the closing of the Yuma, Arizona and Mexico facilities.

10. The Debtor has approximately $43 million in secured indebtedness. First, as of August 28, 2002, the Debtor owed approximately $77,000.00 to a group of banks (the "Revolving Lenders") under its $65 million working capital revolving loan facility. Second, the Debtor owes approximately $43 million to a group of banks (the "Term Lenders") who made term loans to the

Debtor. The Revolving Lenders and the Term Lenders (collectively, the "Secured Parties") claim a lien on essentially all of the Debtor's assets.

11. In addition, the Debtor estimates its general unsecured debt to be approximately $24 million. Of the foregoing, approximately $16 million is owed to approximately sixty-two (62) trade vendors pursuant to vendor notes issued in the summer of 2001. The Debtor also has additional unsecured indebtedness in the principal amount of $6 million owed to Blount Family Irrevocable Trust, L.L.C. and in the principal amount of $37.5 million owed to Samuel R. Blount, plus interest accrued on the foregoing obligations.

SUMMARY OF RELIEF REQUESTED

12. The Filing Date occurred in the middle of the Debtor's regular pay period. To preserve its workforce, the Debtor seeks authority to honor and pay current all Employee Obligations (as herein defined), including those that arose before the Filing Date. The Employee Obligations total approximately $750,000.

13. The Debtor also requests the Court to authorize and direct the Debtor's banks to honor all checks for payment of the Employee Obligations.

JURISDICTION AND NOTICE

14. The Debtor brings the motion pursuant to Sections 105(a), 363(b), 507(a)(3), 507(a)(4) and 1114(e) of the Bankruptcy Code.

15. No committee of unsecured creditors has been appointed in the Debtor's bankruptcy case. The Debtor has served a copy of the Motion on the 20 largest unsecured creditors, Bank of America, counsel for Bank of America, Cardinal Investment Fund, LLC ("Cardinal"), counsel for Cardinal, LaSalle Business Credit, Inc. ("LaSalle"), counsel for LaSalle, Congress Financial Corporation ("Congress"), counsel for Congress, the Bankruptcy Administrator, and all parties requesting notice.

CURRENT OBLIGATIONS

16. The Debtor provides various employee benefits to its employees. As of the Filing Date, the Debtor's outstanding unpaid obligations to employees (the "Employee Obligations") totaled approximately $750,000, including, without limitation, the following:

a. Wages and Salaries. The Debtor pays its hourly employees once a week and salaried employees every two weeks.

i. Salaried Employees. The Debtor pays its salaried employees on a current basis. The Debtor last paid salaried employees on August 30, 2002. Accordingly, the Debtor has no accrued unpaid pre-petition wage obligations to its salaried employees.

ii. Hourly Employees. The Debtor pays its hourly employees one week in arrears. Accordingly, the Debtor's hourly employees have not been paid for services rendered for the week ending August 30, 2002. The Debtor estimates that its payroll checks for the week ending its payroll checks for the week ending August 30, 2002 will total $65,000.00. Additionally, payroll checks in the approximate amount of $65,000.00 were issued on August 30, 2002 for services performed during the week ending August 23, 2002. Some of these payroll checks may not have cleared the bank as of the Filing Date. Although the Debtor estimates the forgoing that wages and salaries accrued and unpaid as of the Filing Date totaled approximately $130,000, on information and belief, none of the payments to employees will exceed the priority amount set forth in Section 507(a)(4) of the Bankruptcy Code.

b. Employment Taxes. With each payroll, the Debtor pays local, state and federal withholding, FICA and other payroll-related taxes. Additionally, the Debtor pays certain unemployment taxes and other taxes on a monthly or quarterly basis. Collectively, the Debtor estimates these payroll related taxes (the "Employment Taxes") accrued and unpaid as of the Filing Date totaled approximately $200,000.

c. Medical and Dental Insurance. The Debtor provides medical and dental insurance for eligible employees. The Debtor withholds approximately $30,000 per month in employee contributions to the medical and dental plans. Monthly average medical and dental claims, premiums, employee contributions, withholding, and administrative fees total approximately $150,000. As of the Filing Date, the Debtor owes approximately $150,000 in accrued but unpaid medical and dental claims.

d. Disability Insurance. The Debtor provides long term and short term disability insurance and accidental death and dismemberment ("AD&D") insurance (the "Insurance") for all eligible employees. The Debtor pays premiums averaging approximately $7,000 per month Insurance. The Debtor estimates that unpaid premiums as of the Filing Date totaled approximately $7,000.00.

e. Retirement Plans. The Debtor maintains a qualified retirement plan under 26 U.S.C. § 401(k) (the "Retirement Plan"). The Debtor matches one-third of the employee contributions up to an amount equaling 3.33% of the employee's annual compensation. Payments into the Retirement Plan are taken as payroll deductions and wired to the plan administrator along with the employees matching contributions every two weeks. The Debtor estimates that obligations relating to the Retirement Plan accrued and unpaid as of the Filing Date totaled approximately $25,000, including matching contributions of approximately $6,000.

f. Union Contributions. Under certain union contracts, the Debtor makes contributions to the union's pension plan of approximately $12,000 per month. The Debtor estimates that accrued and unpaid contributions total $12,000 as of the Filing Date

g. Workers' Compensation. The Debtor provides workers' compensation benefits to the employees. The Debtor's workers' compensation plan is self-insured. The Debtor reserves approximately $50,000 per month to pay workers' compensation claims. The Debtor also pays approximately $25,000 per month in premiums for excess loss insurance. The Debtor estimates that workers' compensation claims and premiums accrued and unpaid as of the Filing Date totaled approximately $200,000.

h. Educational Assistance Plans. Pursuant to an educational assistance plan, the Debtor reimburses employees for a portion of the employees' tuition and related educational expenses. The Debtor's reimbursements to employees under the educational assistance plan average approximately $1,000 per month. The Debtor estimates that expenses associated with these plans accrued and unpaid as of the Filing Date totaled approximately $1,000.

j. Reimbursable Business Expenses. In the ordinary course of business, the Debtor reimburses employees for certain out-of-pocket expenses incurred in the scope of their employment, including expenses for travel, professional seminars, auto expenses, meals, supplies, and miscellaneous business expenses (collectively, the "Business Expenses"). The Debtor's policies require employees to submit reports and verified receipts for reimbursement of Business Expenses.

The Business Expenses average approximately $25,000 per month. The Debtor estimates that Business Expenses accrued and unpaid as of the Filing Date totaled approximately $25,000.

PAYMENT OF OBLIGATIONS

17. The Debtor requests authority pursuant to Sections 105 and 507(a)(3) and (4) of the Bankruptcy Code to pay the Employee Obligations. The Debtor shall pay the Employee Obligations according to the terms and conditions of existing contracts, agreements, plans, and internal policies. Nothing in the motion constitutes assumption of any executory contract and the Debtor reserves all rights.

18. The Debtor further requests the Court to authorize and direct all banks and financial institutions to receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtor related to the Employee Obligations.

19. Section 105(a) of the Bankruptcy Code provides that the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. The purpose of Section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction." 2 Collier on Bankruptcy § 105.01[1], at 105-5 to 105-6 (15th ed. rev. 2000).

20. Payments to employees fall under the "necessity of payment" doctrine, which allows the payment of pre-petition claims that are "indispensably necessary" to continuing the debtor's operation. In re Sharon Steel, 159 B.R. 730, 737 (Bankr. W.D. Pa. 1993). Courts recognize that employees will not continue to work during a bankruptcy case unless their pay and benefits remain intact and uninterrupted. See In re Equalnet Communications Corp., 258 B.R. 368, 370

(Bankr. S.D. Tex. 2000); see also In re Braniff, Inc. 218 B.R. 628, 633 (Bankr. M.D. Fla. 1998)(court permitted post-petition payment of certain pre-petition employee wage claims); In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987) (approving bankruptcy court order authorizing debtor to pay pre-bankruptcy wages, salaries, employee benefits and reimbursements and workers' compensation claims and premiums); In re Ionosphere Clubs, Inc., 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989) (court may invoke inherent equitable powers to approve payment of all pre-petition wage and other employment-related claims to active personnel); In re Gulf Air, Inc., 112 B.R. 152 (Bankr. W.D. La. 1989) (authorizing debtor to pay pre-bankruptcy wages, salaries, employee benefits and other employee related claims).

21. As set forth in the Affidavit of Marcus A. Watson, the Debtor risks losing its work force and management if the Debtor does not pay the Employee Obligations. The Debtor cannot operate without its current workforce. If operations cease, the Debtor's business will shut down, resulting in irreparable damage to the Debtor's estate and reducing or eliminating recoveries to the Debtor's creditors. Therefore, the Employee Obligations qualify under the necessity of payment doctrine.

22. Moreover, the Debtor is authorized to pay accrued payroll-related taxes. See Begier v. Internal Revenue Service, 496 U.S. 53, 67 (1990) (debtor's payment of employee withholding for federal income and FICA taxes and customer excise taxes not a preferential transfer because held in trust for taxing authority and not part of debtor's estate); City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 96 (3d Cir. 1994) (state law requiring debtor to withhold city income tax from its employees' wages created trust relationship between debtor and city for payment of withheld taxes).

23. The Debtor submits that nearly all of the Employee Obligations would be

entitled to priority status. However, given the large number of employees and certain variables, including the timing of payments and claims for reimbursements, distinguishing between priority and non-priority claims will be burdensome. Consequently, payment of the Employee Obligations will reduce the administrative burden on the Debtor's estate.

24. The total amount of the Employee Obligations is small relative to the loss the Debtor will suffer from a mass defection of its workforce. Accordingly, the Debtor seeks to pay the Employee Obligations all in accordance with the policies, plans and programs that were in place prior to the Filing Date. If such payment is authorized pursuant to the motion, such authorization should not be deemed automatically to constitute post-petition assumption or adoption of any employment contract policy, plan or program.

CONCLUSION

25. Payment of the Employee Obligations is necessary to maintain the Debtor's operations. The loss of value associated with a mass defection will irreparably harm the Debtor's estate and its creditors.

26. Therefore, approval of the motion is in the best interests of the estate, and the relief requested is proper under Sections 105(a), 363(b), 507(a)(3), 507(a)(4) and 1114(e) of the Bankruptcy Code.

WHEREFORE, the Debtor respectfully requests entry of an order granting the relief requested herein and such other and further relief as the Court deems just and proper.

Respectfully submitted this 31 day of September, 2002.

Sherri T. Freeman
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Counsel for the Debtor

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing upon all parties listed on Exhibit 1 attached hereto by the manner indicated therein, or by placing a copy of same in the United States Mail, first-class postage prepaid and addressed to their regular mailing address, on this 3rd day of September, 2002.

OF COUNSEL

975839.1

EXHIBIT 1 TO ALL FIRST DAY MOTIONS
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